

#30

Attorney Docket: C013-1002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: ROBINSON, ERIC
Application No.: 09/416,675
Date Filed: October 12, 1999
For: AUTOMATIC BACKUP SYSTEM

Appeal No. 2003-0744

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Examiner: Uyen Le
Group Art Unit: 2171

JUL 23 2003

Technology Center 2100

Certificate of Mailing

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Dated: July 17, 2003

Maureen Vieira
Maureen Vieira

Mail Stop: Board of Patent Appeals and Interferences
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST

Sir:

Applicant requests the Board to reconsider the Examiner's decision mailed on May 19, 2003 in the above-identified application (Page No. 26). The decision was that the Applicant's Reply Brief to the Examiner's Answer was not timely and has not been considered or entered. Applicant requests the Board to find that the Reply Brief was timely filed and should be considered and should be entered based on the following.

FACTS

The above-identified application is under appeal.

The appeal brief was filed on October 9, 2002. The Examiner's response brief was mailed on December 16, 2002. On February 13, 2003, Applicant requested a one-month extension of

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time to file a reply to the Examiner's answer (copy enclosed). On February 14, 2003, a duplicate request for the extension of time (copy enclosed) was faxed to the Art Unit pursuant to the instructions of the Board. A letter reaffirming this was facsimiled on February 18, 2003 (copy enclosed). On March 12, 2003, a request for a second one-month extension of time was facsimiled to the Art Unit (copy enclosed). On April 16, 2003 a reply to the Examiner's answer was mailed to the Board of Patent Appeal and Interferences (copy enclosed).

On May 9, 2003, an Order Remanding To Examiner was mailed by the Board for consideration for the request for one-month extension of time filed February 14, 2003 for determination regarding whether the Reply Brief filed April 22, 2003 (mailed on April 16, 2003 with a certificate of mailing) would be considered timely based on the extension of time filed on February 14, 2003, and if timely, for consideration of Reply Brief, and if not timely, for written notification to appellant regarding the Examiner's decision. No mention was made in the order of Applicant's request for a second one-month extension of time filed (facsimiled) on March 12, 2003.

The decision stated:

"It is noted that on 14 February 2003, applicant filed a request for one month extension of time under 37 CFR 1.136(b) to reply to the examiner's answer mailed on 17 December 2002. This request extends the date for applicant to reply to 17 March 2003. However, the Reply Brief was not filed until 16 April 2003. Therefore, the Reply Brief is not timely and has not been considered nor entered."

The decision made no mention of Applicant's second one-month extension of time facsimiled on March 12, 2003. Thus the decision was not made on all the papers filed in the application. The decision only mentioned the first request for extension of time. The second request puts the date for response up to at least April 16, 2003.

On June 12, 2003, Applicant facsimiled and mailed with certificate of mailing a request for reconsideration (copy enclosed) based on the fact that it filed a second one-month extension on March 12, 2003 by facsimile, which would put the response date up to at least April 16, 2003.

Applicant has not received a response to the February and March requests for extension of time, or the request for reconsideration. Applicant was successful only once in contacting the person in authority in the Art Unit to discuss the extensions of time. The person advised that if the extensions were timely filed, based on good cause, they would be granted.

The first extension, which was filed three days before the expiration of the initial two-month period for reply to the Examiner's answer, extends the response period by one month to March 16 or 17, 2003. The second request filed by facsimile on March 12, 2003 extends the time for filing a reply to the Examiner's answer to at least April 16, 2003. The Reply Brief was mailed on April 16, 2003 with a Certificate of Mailing.

Applicant's requests for extensions of time were for good cause based on a serious medical problem that seriously effected the attorney's life during the first four months of 2003, as set forth in the requests for extensions. The Examiner possibly did not have a copy of the second one-month extension of time request facsimiled on March 12, 2003 when it rendered its decision. Regardless, such a request was filed and it was filed before the expiration of the first request for extension of time. Thus, the Examiner's decision was not based on all the facts present in the matter.

The Examiner telephonically advised the undersigned that the request for reconsideration was denied on July 15, 2003. However, the Examiner had not seen the decision and the undersigned has not received a copy of the decision. The Examiner was going to attempt to find a copy of the decision. The undersigned attempted to contact the Supervisory Patent Examiner

for the Art Unit for the above application, but was advised by voice mail that he would be unavailable until after July 28, 2003. The voice mail gave a backup number for Supervisory Patent Attorney for another Art Unit 703-305-3830. The undersigned called that number and by voice mail was advised that the second Supervisory Patent Examiner would not be available until July 21, 2003. The undersigned then called the receptionist for the Art Unit who advised that the undersigned should discuss the matter with the Patent Examiner for the application.

In conclusion, Applicant contends that the decision regarding whether to enter and consider the Applicant's reply to the Examiner's answer was made without all the information available, namely the timely filing of a second one-month extension of time request to file the reply based on medical grounds. In view of this, Applicant requests the matter be reviewed and a finding be made that Applicant timely filed two requests for extensions of time for good cause and that the reply to the Examiner's answer was timely filed within the extension periods. A favorable action is solicited.

The Applicant makes this request to the Board of Patent Appeals because the application is already subject to appeal to the Board of Appeals and Interferences. Since the application is subject to appeal, it is not a petitionable item to the Commissioner (Section 1.181(a)). A request for reconsideration has been made to the Art Unit, and they have not responded. Applicant has been unable to find any Rule which addresses the present situation. Applicant contends that this request for review is timely since it is made within two months of the Examiner's decision mailed on May 19, 2003.

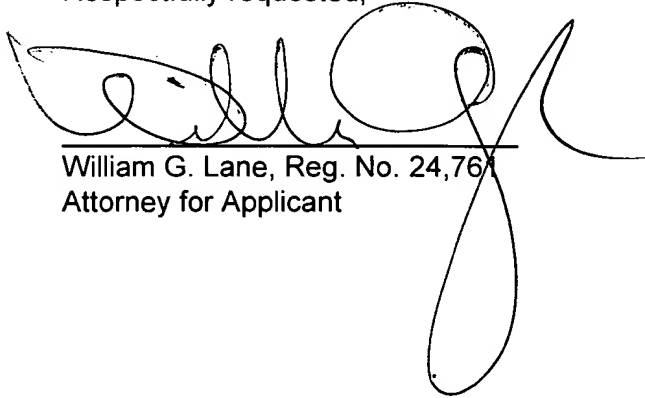
A favorable action is solicited.

Date:

July 17, 2003

WILLIAM G. LANE, INC., P.C.
16485 Laguna Canyon Road, #250
Irvine, California 92618
Tel. 949-585-0348
Fax. 949-585-0494

Respectfully requested,



William G. Lane, Reg. No. 24,761
Attorney for Applicant

FROM

WILLIAM G. LANE, INC., P.C.

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IRVINE, CALIFORNIA 92618

TO

Commissioner for Patents
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P. O. Box 1450
Alexandria, VA 22313-1450

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BOARD OF PATENT APPEALS
AND INTERFERENCES

Client: CMS PERIPHERALS, INC.
Inventor(s): ERIC ROBINSON
Title: AUTOMATIC BACKUP SYSTEM

Atty Dkt No.: C013-1002

Appeal No. 2003-0744

Serial No.: 09/416,675

Date Filed: October 12, 1999

The Commissioner for patents acknowledges receipt of the following listed items on the date stamped hereon:

Request for Reconsideration

Declaration of Maureen Vieira

Copy of Request for Second One Month Extension of Time w/Fax Cover & L

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Date Mailed: June 12, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eric Robinson

Serial No.: 09/416,675

Date Filed: October 12, 1999

For: AUTOMATIC BACKUP SYSTEM

Examiner: Uyen T. Le

Group Art Unit: 2171

(Appeal No. 2003-0744)

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Dated: 6/12/03

Maureen Vieira
Maureen Vieira

REQUEST FOR RECONSIDERATION

Sir:

The above-identified application is under appeal, Appeal No. 2003-0744. In an Order Remanding To Examiner, mailed on May 9, 2003, the Board remanded the above-identified application to the Examiner for consideration of request for a one month extension of time under 1.136(b), filed February 14, 2003, and determination whether reply brief filed April 22, 2003 (Paper No. 24) would be considered timely based on the extension of time filed January 14, 2003. If timely or not, notification was to be furnished to the applicant.

On May 19, 2003 a communication was mailed to the applicant setting forth the following:

"It is noted that on 14 February 2003, applicant filed a request for one month extension of time under 37 CFR 1.136(b) to reply to the examiner's answer mailed on 17 December 2002. This request extends the date for applicant to reply to 17 March 2003. However, the Reply Brief was not filed until 16 April 2003. Therefore, the Reply Brief is not timely and has not been considered nor entered."

On March 12, 2003, a second request for a one month extension of time was filed by facsimile in the above-identified application (a true copy is enclosed together with a copy of the fax log report). Also attached is a declaration from the undersigned's secretary certifying that she facsimiled the Request for Second One Month Extension of Time to Mr. Safet Metjahic, Supervisory Patent Examiner, Technology Center 2100, U.S. Patent and Trademark Office (Fax 703-746-4456). The request was filed before the lapse of the first period of extension of time. The second extension of time would extend the period to respond beyond April 16, 2003. The Reply Brief was filed on April 16, 2003. It is respectfully submitted that the Reply Brief was timely filed.

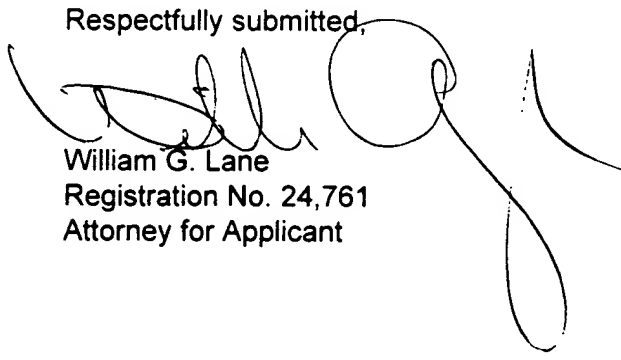
In view of the above, the undersigned requests that the Applicant's Reply To The Examiner's Answer be entered in the appeal and considered.

Date:

June 12, 2003

Correspondence Address:
WILLIAM G. LANE, INC., P.C.
16485 Laguna Canyon Road, #250
Irvine, California 92618
Tel. 949-585-0348
Fax. 949-585-0494

Respectfully submitted,


William G. Lane
Registration No. 24,761
Attorney for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eric Robinson

Serial No.: 09/416,675

Date Filed: October 12, 1999

For: AUTOMATIC BACKUP SYSTEM

Examiner: Uyen T. Le

Group Art Unit: 2171

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Dated: 6/12/03

Maureen Vieira
Maureen Vieira

DECLARATION OF MAUREEN VIEIRA

I, Maureen Vieira, hereby declare that I am the secretary to William G. Lane, attorney of record for the above-identified application.

Attached hereto is a true copy of the Request for Second One Month Extension of Time under Section 1.136(b), the facsimile cover sheet addressed to Safet Metjahic, Supervisory Patent Examiner, Technology Center 2100, U.S. Patent and Trademark Office, Washington, DC 20231, and a Fax Log Report dated Mar-12-03 10:55 AM. I facsimiled the attached request and the cover sheet to Fax No. 703-745-4456 on March 12, 2003, and the fax machine duly printed out the attached Fax Log Report on March 12, 2003.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: June 12, 2003

Maureen Vieira
Maureen Vieira

Mar-12-03 10:55 AM

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
17037464456	OK	03	Sent	Mar-12	10:53A	00:01:37	002586030022

FAX

Date **March 12, 2003**

Number of pages including cover sheet **3**

TO: Safet Metjahic
Supervisory Patent Examiner
Technology Center 2100
U.S. Patent and Trademark Office
Washington, DC 20231

Phone 703-308-1436
Fax 703-746-4456

FROM: William G. Lane
William G. Lane, Inc., P.C.
16485 Laguna Canyon Road
Suite 250
Irvine, CA 92618
email greglane1@hotmail.com
Phone 949-585-0348
Fax Phone 949-585-0494


REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re: Application No. 09/416,675
Filing Date: October 12, 1999
Applicant: Robinson, Eric
Attorney Docket C013-1002

CERTIFICATE OF TRANSMISSION
under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United State Patent and Trademark Office on March 12, 2003

Date: March 12, 2003


Maureen Vieira

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor Eric Robinson
 Serial No. 09/416,675
 Date Filed October 12, 1999
 For. AUTOMATIC BACKUP SYSTEM

Attention: Safet Metjahic
 Supervisory Patent Examiner
 Technology Center: 2100
 Facsimile No.: 703 746-4456

Examiner: Uyen Le
 Group Art Unit: 2171

Commissioner for Patents

Washington, DC 20231

CERTIFICATE OF TRANSMISSION
 under 37 CFR 1.8

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Date: March 12, 2003

Maureen Vieira
 Maureen Vieira

REQUEST FOR SECOND ONE MONTH EXTENSION OF TIME
 (Section 1.136(b))

Sir:

The undersigned requests a further one month extension of time (until April 26, 2003) to file a Reply to the Examiner's Answer in the above-identified appeal, for medical reasons.

Applicant has been advised by the Board of Patent Appeals and Interferences that the above application has been remanded back to the Art Group for further consideration. Thus, this request is being made to the Art Group.

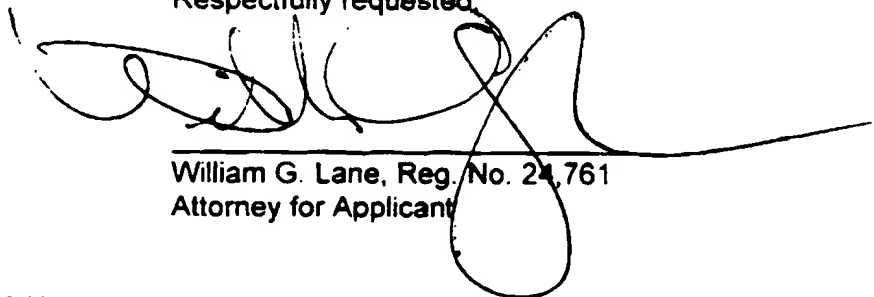
Discussion

The first request for a one month extension of time set forth medical problems experienced by the undersigned up to the date of the request. Unfortunately, the problem was not resolved at that time. On February 26, 2003, the undersigned experienced another episode of the hematuria. On the same day, the undersigned was subject to an endoscopic examination at Norris Cancer Clinic in Los Angeles and a large lesion was discovered in the bladder wall. The examining physician opined that it appeared to be bladder cancer. His

opinion was conditioned upon a pathological examination of the lesion. On the following Monday, March 3, 2003, the undersigned underwent surgery at Norris Cancer Clinic, wherein the lesion was excised, fulgurated and tissues samples retrieved for pathology. On Wednesday, March 5, 2003, the undersigned was advised by his physician that the lesion was not cancerous, that the lesion was caused by localized primary amyloidosis. The undersigned conferred with the Mayo Clinic in Rochester, Minnesota (a leader in amyloidosis treatment) regarding the amyloidosis and was advised on Monday, March 10, 2003, that it was not immediately life-threatening and that the bladder wall should be endoscopically monitored on a periodic basis to ensure that there was not a recurrence of the lesion or other lesions. The undersigned does not hesitate to say that the last two weeks were very time consuming and the most stressful in his life. The undersigned's hours were severely limited.

The undersigned requires an additional month to review the Examiner's answer and prepare an appropriate response. A favorable action is solicited. The undersigned requests that the above facts be maintained in private. In view of the findings of the physicians, the undersigned believes that there will be no further need for extensions based on medical causes.

Respectfully requested,

A large, stylized handwritten signature in black ink, appearing to read 'William G. Lane', is written over a horizontal line.

William G. Lane, Reg. No. 24,761
Attorney for Applicant

Date: March 12, 2003

WILLIAM G. LANE, INC., P.C.
16485 Laguna Canyon Road, #250
Irvine, California 92618
Tel. 949-585-0348
Fax. 949-585-0494

FAX

Date June 12, 2003

Number of pages including cover sheet 2

TO: Safet Metjahic
Supervisory Patent Examiner
Technology Center 2100
U.S. Patent and Trademark Office
Washington, DC 20231

Phone 703-308-1436
Fax 703-746-4456

FROM: William G. Lane
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16485 Laguna Canyon Road
Suite 250
Irvine, CA 92618
email greglane1@hotmail.com
Phone 949-585-0348
Fax Phone 949-585-0494

REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re: Application No. 09/416,675
Filing Date: October 12, 1999
Applicant: Robinson, Eric
Attorney Docket C013-1002

Please replace the previously sent fax cover with the following fax cover. The certificate of transmission had the incorrect date on it. Thank you.

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Date: June 12, 2003


Maureen Vieira

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TO: Safet Metjahic
Supervisory Patent Examiner
Technology Center 2100
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Washington, DC 20231

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Fax 703-746-4456

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Filing Date: October 12, 1999
Applicant: Robinson, Eric
Attorney Docket C013-1002

Following is a Request for Consideration and related documents that was also sent via first class mail to Examiner Uyen T. Le.

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under 37 CFR 1.8

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Maureen Vieira

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17037464456	OK	02	Sent	Jun-12	03:51P	00:01:11	002586030022

FAX

Date June 12, 2003

Number of pages including cover sheet 8

TO: Safet Metjahic
Supervisory Patent Examiner
Technology Center 2100
U.S. Patent and Trademark Office
Washington, DC 20231

Phone 703-308-1436
Fax 703-746-4456

FROM: William G. Lane
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Suite 250
Irvine, CA 92618
email greglane1@hotmail.com
Phone 949-585-0348
Fax Phone 949-585-0494

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Re: Application No. 09/416,675
Filing Date: October 12, 1999
Applicant: Robinson, Eric
Attorney Docket C013-1002

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Date: June 12, 2003d


Maureen Vieira

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17037464456	OK	08	Sent	Jun-12	03:34P	00:03:45	002586030022

FROM

WILLIAM G. LANE, INC., P.C.

16485 LAGUNA CANYON ROAD

SUITE 250

IRVINE, CALIFORNIA 92618

TO

Board of Patent Appeals and Interferences
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, D.C. 20231

Client: CMS PERIPHERALS, INC.
Inventor(s): ERIC ROBINSON
Title: AUTOMATIC BACKUP SYSTEM

✓
Appeal No. 2003-0744
Atty Dkt No.: C013-1002
Serial No.: 09/416,675
Date Filed: October 12, 1999

The Board of Patent Appeals and Interferences acknowledges receipt of the following listed items on the date stamped hereon:

Reply To Examiner's Answer (O+2)
Certificate of Mailing

Date Mailed: April 16, 2003

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: ROBINSON, ERIC
Application No.: 09/416,675
Date Filed: October 12, 1999
For: AUTOMATIC BACKUP SYSTEM

Appeal No. 2003-0744

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I hereby certify that this document, together with any described as being attached or enclosed, is being deposited with the United States Postal Service as first class mail, postage fully prepaid, addressed to Board of Patent Appeals and Interferences, Washington, D.C. 20231, on **April 16, 2003**.

Dated: **April 16, 2003**


Maureen Vieira

Board of Patent Appeals and Interferences
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, D.C. 20231

REPLY TO EXAMINER'S ANSWER

Sir:

The (10) *Grounds for Rejection* set forth in the Examiner's Answer are identical to the grounds of rejection set forth in the Final Office Action mailed on 10/02/01 and have been addressed in the Applicant's Brief on Appeal.

Applicant responds to points in the Examiner's (11) *Response to Argument* set forth in the Examiner's Answer that had not been raised earlier. All other issues raised in the (11) *Response to Argument* have been addressed in Applicant's Brief on Appeal. The description of the Claims and the Claims are set forth in Applicant's Brief.

Claim 21

The Examiner contends that Claim 21 does not exclude the use of a scheduler to perform an automatic backup (the Applicant contends that Makinen does not disclose the method of automatically backing up data from a computer as set forth in Claim 21 and that Makinen requires a scheduler for backup). The Examiner further contends that Claim 21 is

broad enough to read on the method of scheduled backup disclosed by Makinen (column 1, lines 55-62, and columns 2-4).

Claim 21 includes several steps. The third step requires that the computer recognize the ABS unit (Automatic Backup System unit) inserted into its PCMCIA port. The next step, the fourth step, requires that the computer launch its automatic backup procedure. The claim recites immediate automatic backup upon recognition of the ABS unit. The sequence of steps clearly excludes scheduling the automatic backup.

With respect to Makinen, Makinen explicitly teaches that a scheduler controls automated backup mechanism (column 1, lines 50-51 and lines 58-60). Over and over again, Makinen teaches that the automatic backup is scheduled and not automatically initiated upon the recognition of an ABS unit or any other unit for that matter in its PCMCIA port or any other port (see column 2, lines 16-17, lines 45-46; column 3, lines 7-9 and lines 21-25; and column 4, lines 37-42).

The bottom line is that Makinen never discloses or even suggests having an automatic backup that is not controlled or subject to a scheduler. The scheduler is a key element of the Makinen invention.

The Examiner contends that Applicant attacks the reference individually in the 103 rejection and that the combination of steps of Claim 21 clearly taught by Makinen and Harari.

Applicant does not attack the references or the combination. However, Applicant does attack the conclusion that the combination of the two references disclose all the steps of Claim 21 and the other claims of the application. Applicant, in its Brief, discloses what is taught by each reference individually to point out that neither teaches the automatic backup of Claim 21 and Applicant's other claims. Neither reference discloses initiating the automatic backup upon

recognition of the ABS unit. The combination of the two references does not remedy this deficiency. The combination does not teach the above sequence of the third and fourth steps.

The Examiner contends that the motivation to combine the teachings of Makinen and Harari was clearly stated in the Office Action. The Examiner continues that one of ordinary skill in the art presumably knows something about the art besides what it is explicitly disclosed by reference and knows how to apply the principles taught by the references to get the desired results. This is the crux of this appeal. As Applicant has pointed out in responses to the Office Actions and the Appeal Brief, the combination of the two references does not yield the process of Claim 21. The references failed to teach that the automatic backup procedure starts on recognition of the ABS unit in the PCMCIA port. The Examiner contends that it would be obvious to one ordinarily skilled in the art to apply the principles taught by the references to get the desired result. The desired result is what is set forth in Claim 21 and the other claims of the application. Nowhere is there a teaching, suggesting or disclosing Applicant's desired result. How can one ordinarily skilled in the art combine two teachings and modify the teachings to obtain a desired result when there is no teaching or suggestion of the desired result in the record? Only in hindsight can one combine the two references and make the necessary changes to obtain the method of Claim 21. Only in hindsight can one ordinarily skilled in the art reconstruct the combination of two references to yield Applicant's invention. Clearly, hindsight reconstruction is not a proper basis for rejecting a claim.

Claims 22-40

The Applicant argues that the Examiner used hindsight to arrive at the rejection of obvious for Claims 22-39 because no prior was cited to show the elements of these claims.

The Examiner's response to that argument was that the Examiner it took official notice that the steps set forth in these claims are well-known in the art.

As noted in Section 2144.04 of the Manual of Patent Examining Procedure, "Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the Examiner's conclusion should be judicially applied. Furthermore, as noted by the court in *In re Ahlert* (424 F.2d 1088, 165 USPQ 418 (CCPA 1970)), any fact so noted should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriately to rely solely on common knowledge in the art without evidentiary support in the record as a principal evidence upon which a rejection was based (see *Zurko* 258 F.3d 1379 at 1386, 59 USPQ 2d 1693 at 1697; *Ahlert*, 424 F2d 1088 at 1092, 165 USPQ 418, 421).

The Applicant in its Brief has already addressed the fact that there is no teaching or suggestion in the cited prior art for the elements set forth in Claims 22-39. The Examiner conveniently classifies all these elements as well-known in the art and relies on official notice to boot-strap support for this conclusion. The Examiner's reliance on official notice to supply the elements of Claims 21-39 is without support and misplaced. As stated by the CCPA in 1961, "The notice of facts beyond the record which may be taken by the Examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute.'" (*In re Ahlert*, 424 F2d at 1091, 165 USPQ at 420 citing *In re Knapp Monarch Co.*, 296 F2d 230, 132 USPQ 6 (CCPA 1961)). The recited elements of Claims 21-39 are beyond the record and are not capable of instant and unquestionable demonstration to defy dispute.

The Examiner argues that: "The references do not have to teach or suggest each step claimed by the Appellant. One of ordinary skill in the art presumably knows something about the art beyond that which is explicitly shown or suggested in the references and knows how to apply the principles taught in the combination of references to arrive at the desired result." Nowhere does the Examiner specify the "principles" taught in the combination of the references and the Examiner does not where there is any suggestion or disclosure in the prior art regarding the "desired result." As stated many times by the Applicant in the responses to the Office Actions and in the Brief, the combination of references does not read on the claims. The combination of the references requires a substantial change or addition to yield the claimed invention. A mere allegation that there is motivation to make the change does not meet the standard required. There must be a reason on the record to have one ordinarily skilled in the art motivated to make the change to obtain a desired result.

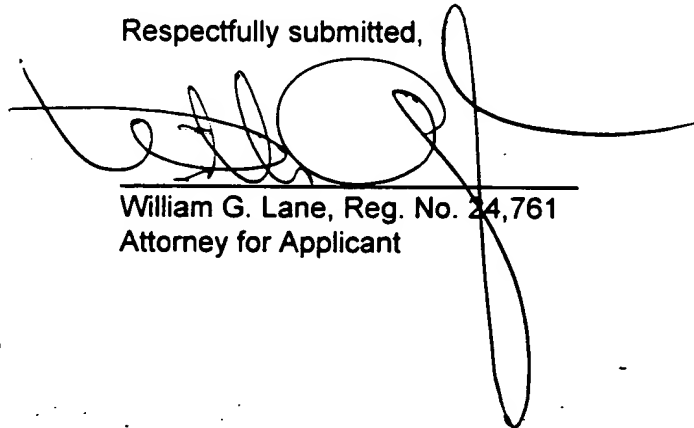
The Office Action is not supported by the record. Motivation requires a reason for doing an act. Somewhere in the prior art, there must be a suggestion or disclosure regarding the desirability of doing that act. Only then can one ordinarily skilled in art be motivated to carry out the act to obtain the desired result. The Examiner has failed to show the slightest teaching that an automatic backup system without a scheduler is a desired result. Without such a teaching, there is no motivation to alter the combination of the two references.

With respect to Claim 40, the Applicant argued in the Brief that the automatic backup taught by Makinen does not commence until the scheduled date and time programmed into the computer is met. The Examiner contends that Claim 40 does not exclude scheduled automatic backup, and that Claim 40 is broad enough to read on the scheduled automatic backup of Makinen. The Examiner contents that each reference does not have to teach the limitations of

Claim 40. That one of ordinary skill in the art having both Makinen and Harari references would certainly be motivated to combine the teachings as stated in the Office Action. The combination of Makinen and Harari does not yield the steps of Claim 40. The claim recites that: "The computer identifying the automatic backup device; the computer automatically launching a backup procedure to backup its files onto the automatic backup device...." In Claim 40, as Claim 21, recites that once the computer identifies the automatic backup device, the computer automatically launches a backup procedure and does not wait for a scheduled time or date. This claim does not read on an automatic procedure having a scheduler as taught in the prior art. The Examiner has failed to show why one ordinarily skilled in the art would eliminate a scheduler in backing up. No evidence has been introduced that such elimination is desired or beneficial. There is nothing in record to support the Examiner's unsupported allegations that one ordinarily skilled in the art would be motivated to make the necessary changes to the combination to yield the method of Claim 40.

In view of the above remarks and in light of the arguments set forth in Applicant's Brief, Applicant submits that Claims 21-40 are patentable over the cited prior art; that the 35 USC 103(a) rejection of the claims should be withdrawn and that the claims should be allowed.

Respectfully submitted,



William G. Lane, Reg. No. 24,761
Attorney for Applicant

Date: April 16, 2003

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Mar-12-03 10:55 AM

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
17037464456	OK	03	Sent	Mar-12	10:53A	00:01:37	002586030022

FAX

Date March 12, 2003

Number of pages including cover sheet 3

TO: Safet Metjahic
Supervisory Patent Examiner
Technology Center 2100
U.S. Patent and Trademark Office
Washington, DC 20231

Phone 703-308-1436
Fax 703-746-4456

FROM: William G. Lane
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Fax Phone 949-585-0494


REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re: Application No. 09/416,675
Filing Date: October 12, 1999
Applicant: Robinson, Eric
Attorney Docket C013-1002

CERTIFICATE OF TRANSMISSION
under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United State Patent and Trademark Office on March 12, 2003

Date: March 12, 2003


Maureen Vieira

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Eric Robinson
Serial No.: 09/416,675
Date Filed: October 12, 1999
For: AUTOMATIC BACKUP SYSTEM

Attention: Safet Metjahic
Supervisory Patent Examiner
Technology Center: 2100
Facsimile No.: 703 746-4456
Examiner: Uyen Le
Group Art Unit: 2171

Commissioner for Patents
Washington, DC 20231

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March 12, 2003.

Date: March 12, 2003

Maureen Vieira
Maureen Vieira

REQUEST FOR SECOND ONE MONTH EXTENSION OF TIME
(Section 1.136(b))

Sir:

The undersigned requests a further one month extension of time (until April 26, 2003) to
file a Reply to the Examiner's Answer in the above-identified appeal, for medical reasons.

Applicant has been advised by the Board of Patent Appeals and Interferences that the
above application has been remanded back to the Art Group for further consideration. Thus,
this request is being made to the Art Group.

Discussion

The first request for a one month extension of time set forth medical problems
experienced by the undersigned up to the date of the request. Unfortunately, the problem was
not resolved at that time. On February 26, 2003, the undersigned experienced another episode
of the hematuria. On the same day, the undersigned was subject to an endoscopic
examination at Norris Cancer Clinic in Los Angeles and a large lesion was discovered in the
bladder wall. The examining physician opined that it appeared to be bladder cancer. His

opinion was conditioned upon a pathological examination of the lesion. On the following Monday, March 3, 2003, the undersigned underwent surgery at Norris Cancer Clinic, wherein the lesion was excised, fulgurated and tissues samples retrieved for pathology. On Wednesday, March 5, 2003, the undersigned was advised by his physician that the lesion was not cancerous, that the lesion was caused by localized primary amyloidosis. The undersigned conferred with the Mayo Clinic in Rochester, Minnesota (a leader in amyloidosis treatment) regarding the amyloidosis and was advised on Monday, March 10, 2003, that it was not immediately life-threatening and that the bladder wall should be endoscopically monitored on a periodic basis to ensure that there was not a recurrence of the lesion or other lesions. The undersigned does not hesitate to say that the last two weeks were very time consuming and the most stressful in his life. The undersigned's hours were severely limited.

The undersigned requires an additional month to review the Examiner's answer and prepare an appropriate response. A favorable action is solicited. The undersigned requests that the above facts be maintained in private. In view of the findings of the physicians, the undersigned believes that there will be no further need for extensions based on medical causes.

Respectfully requested

Date: March 12, 2003



William G. Lane, Reg. No. 24,761
Attorney for Applicant

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Feb-18-03 01:36 PM

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
17033085403	OK	08	Sent	Feb-18	01:33P	00:03:03	002586030022

FAX

Date February 18, 2003

Number of pages including cover sheet 8

TO: Safet Metjahic
Supervisory Patent Examiner
Technology Center 2100
U.S. Patent and Trademark Office
Washington, DC 20231

Phone 703-308-1436
Fax 703-308-5403 / 703 746-7238

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Fax Phone 949-585-0494

REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re: Application No. 09/416,675
Filing Date: October 12, 1999
Appellant(s): Robinson, Eric
Attorney Docket C013-1002

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Eric Robinson
Serial No.: 09/416,675
Date Filed: October 12, 1999
For: AUTOMATIC BACKUP SYSTEM

Attention: Safet Metjahic
Supervisory Patent Examiner
Technology Center: 2100
Facsimile No.: 703 308-5403 / 703 746-7238

Examiner: Uyen Le
Group Art Unit: 2171

Commissioner for Patents

Washington, DC 20231

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FEB. 18, 2003

Date: 2/18/03

Maureen Vieira
Maureen Vieira

LETTER

Sir:

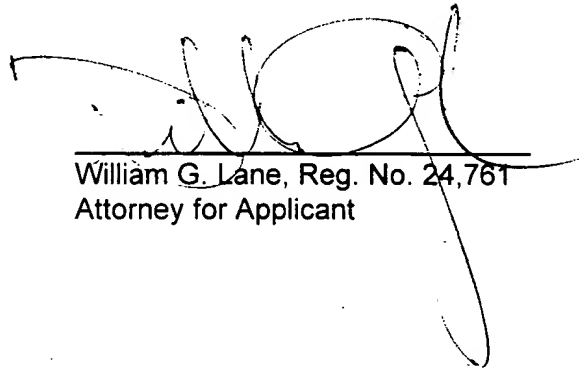
Attached hereto is a copy of the motion that we filed in the above-identified application requesting a one-month extension of time to respond to the Examiner's Answer. The request was filed in the U.S. Patent and Trademark Office with the Board of Patent Appeals and Interferences on February 13, 2003. On February 14, 2003, the undersigned call the Board of Patent Appeals and was advised that the application had been sent back to the Art Unit for reexamination and that the Art Unit would be reviewing the motion and making a decision on it. The Board of Patent Appeals advised that a copy of the motion should be faxed to the Art Unit. On February 14, 2003, copies of motion were faxed to Mr. Safet Metjahic to Fax No. 703 308-5403 and to Fax No. 703 746-7238. The undersigned tried to contact Mr. Metjahic on Friday, February 14, 2003, and on Tuesday, February 18, 2003, and left voice mails together with the undersigned's telephone

number 949 585-0348. The undersigned respectfully submits that good cause has been shown and that the extension should be granted. A favorable action is solicited.

Respectfully submitted,

Date:

Feb. 18, 2003



William G. Lane, Reg. No. 24,761
Attorney for Applicant

WILLIAM G. LANE, INC., P.C.
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Maureen Vieira
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SN 09/416,675
Filed 10/12/99
Applicant ROBINSON, Eric
Title AUTOMATIC BACKUP SYSTEM

Attorney Docket No. C013-1002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Inventor: Eric Robinson
Serial No.: 09/416,675
Date Filed: October 12, 1999
For: AUTOMATIC BACKUP SYSTEM

Examiner: Uyen Le
Group Art Unit: 2171

Commissioner for Patents
BOARD OF PATENT APPEALS
AND INTERFERENCES
Washington, DC 20231

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Date: February 14, 2003

William G. Lape
WILLIAM G. LAPE

REQUEST FOR ONE MONTH EXTENSION OF TIME
(Section 1.136(b))

Sir:

The undersigned requests a one month extension of time to file a Reply to the Examiner's Answer in the above-identified appeal, for medical reasons.

Discussion

The undersigned attorney of record in the above-identified application prepared and filed the application, prosecuted the application in the USPTO and prepared and filed the Appeal Brief. The undersigned has a full IP practice and has been a patent attorney for 34 years.

The undersigned had prostate cancer and had a prostatectomy in January of 2000. In early November of 2002, the undersigned had blood in the urine. The undersigned was examined at some length, i.e. scanned, scoped, blood testing, etc., by his urologist to

determine the cause. The bleeding stopped and the cause was not determined. The urologist suggested we wait to see if the bleeding occurred again. In the first two weeks of January 2003, the undersigned took a trip, that was scheduled long in advance, to New Zealand. While in New Zealand, the undersigned developed a severe cold and again had the above urological condition. The condition was far more severe and required the undersigned to go to an Emergency Room for treatment in Auckland, New Zealand. The undersigned returned to the U.S. under remedial medical treatment still suffering from bleeding. The undersigned has been undergoing further testing and examination to find the cause for the bleeding. Although there can be a variety of causes for bleeding, the principal and serious causes are renal system cancers and aneurysms. With the stress of the medical situation, the undersigned is finding it difficult to work a full day and meet all the deadline dates for the workload. The undersigned estimates that preparation for drafting a reply brief will take from eight to twelve hours. The undersigned has not worked an eight-hour day since returning from New Zealand. The undersigned is also requesting extensions of time in a Trademark Opposition matter, and in a Trademark Concurrent Use proceeding matter.

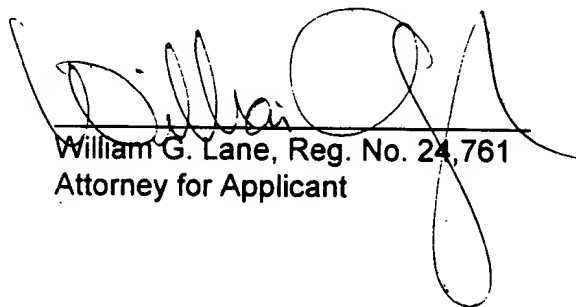
The undersigned also is scheduled for jury duty on February 28, 2003 and is requesting that date be extended. The undersigned has not received confirmation of the extension.

The undersigned requests a one month extension in order to complete the medical evaluation.

This request is not made for purposes of delay, but is made for good cause. A favorable action is solicited. The undersigned requests that the above facts be maintained in private.

Respectfully submitted,

Date: February 13, 2003



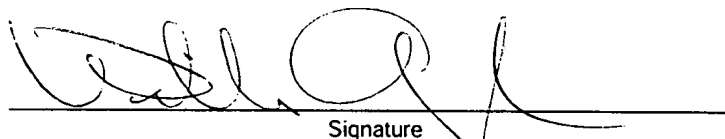
William G. Lane, Reg. No. 24,761
Attorney for Applicant

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WILLIAM G. LANE

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each submitted paper.

REQUEST FOR ONE MONTH EXTENSION OF TIME
SN 09/416,675
Filed 10/12/1999
Applicant: ROBINSON, ERIC
Title: AUTOMATIC BACKUP SYSTEM
Docket: C013-1002

FAX

Date February 14, 2003

Number of pages including cover 5
sheet

TO: Safet Metjahic
Supervisory Patent Examiner
Technical Center 2100
P/2171

Phone 703 308-1436

Fax Phone 703 308-5402 & 703 746-7238

FROM: William G. Lane
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Fax Phone 949-585-0494

REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re Application No. 09/416,675
Filing Date: October 12, 1999
Appellant: Robinson, Eric
Docket: C013-1002

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Feb-14-03 04:05 PM

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17033085403	OK	05	Sent	Feb-14	04:04P	00:01:47	002586030022

FAX

Date February 13, 2003

Number of pages including cover sheet 5

TO: The Board of Patent Appeals and
Interferences
U.S. Patent and Trademark Office
Washington, DC 20231

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FROM: William G. Lane
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Irvine, CA 92618

Phone 949-585-0348
Fax Phone 949-585-0494

REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re: Application No. 09/416,675
Filing Date: October 12, 1999
Appellant(s): Robinson, Eric
Attorney Docket C013-1002

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on February 13, 2003.
Date

Maureen Vieira 2/13/03
Signature

Maureen Vieira
Typed or printed name of person signing Certificate

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each submitted paper.

SN 09/416,675
Filed 10/12/99
Applicant ROBINSON, Eric
Title AUTOMATIC BACKUP SYSTEM

Attorney Docket No. C013-1002

FAX

Date February 13, 2003

Number of pages including cover sheet 5

TO: The Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
Washington, DC 20231

Phone 703-308-9797
Fax 703-308-7953

FROM: William G. Lane
William G. Lane, Inc., P.C.
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Suite 250
Irvine, CA 92618

Phone 949-585-0348
Fax Phone 949-585-0494

REMARKS: ☐ Urgent ☐ For your Review ☐ Reply ASAP ☐ Please Comment

Re: Application No. 09/416,675
Filing Date: October 12, 1999
Appellant(s): Robinson, Eric
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Feb-13-03 02:30 PM

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Inventor: Eric Robinson

Serial No.: 09/416,675

Date Filed: October 12, 1999

For: AUTOMATIC BACKUP SYSTEM

Examiner: Uyen Le

Group Art Unit: 2171

Commissioner for Patents
BOARD OF PATENT APPEALS
AND INTERFERENCES
Washington, DC 20231

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Date: February 13, 2003


Maureen Vieira

REQUEST FOR ONE MONTH EXTENSION OF TIME
(Section 1.136(b))

Sir:

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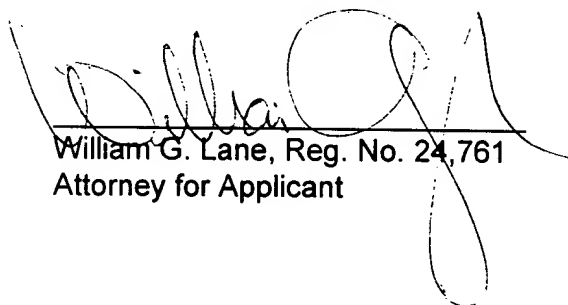
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Respectfully submitted,

Date: February 13, 2003



William G. Lane, Reg. No. 24,761
Attorney for Applicant

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Applicant ROBINSON, Eric
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Attorney Docket No. C013-1002